

1 **NEXUS BANKRUPTCY**
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8 Attorney for Debtor

9 **UNITED STATES BANKRUPTCY COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11 **RIVERSIDE DIVISION**

12 In re:

13 **JARED HUNTER SCARTH,**

14 Debtor.

15 Case No.: 6:23-bk-10960-WJ

16 Chapter 13

17 **DEBTOR'S OPPOSITION TO THE
18 CHAPTER 13 TRUSTEE'S MOTION TO
19 DISMISS AND REPLY TO OBJECTION
20 TO CONFIRMATION OF CHAPTER 13
21 PLAN**

22 **Confirmation Hearing:**

23 Date: May 31, 2023

24 Time: 3:30 p.m.

25 Location: Courtroom 304
26 3420 Twelfth Street
27 Riverside, CA 92501

28 Debtor, Jared Hunter Scarth, hereby opposes the Chapter 13 Trustee's Motion to Dismiss
19 and replies to their Objection to Confirmation as follows:

20 **ARGUMENT**

21 On May 15, 2023, Debtor's Counsel reached out to Bridget Kelly, staff attorney for the
22 Chapter 13 Trustee, and informed her that the Debtor was current on his mortgage payments, but
23 that the Secured Debt Payment History Declaration ("SDPHD") was not yet filed due to Counsel
24 being burdened with a series of family emergencies (to put it lightly). On May 17, 2023,
25 Debtor's Counsel sent Ms. Kelly an email which contained an unsigned copy of the completed
26

1 SDPHD and indicated that it would be promptly filed. The SDPHD was then promptly filed later
2 that evening once Debtor's Counsel obtained the Debtor's signature.

3 As shown from the payment history attached to the SDPHD, the Debtor and his spouse
4 have been consistently and timely making their first mortgage payments since well before this
5 case was contemplated. It is only the Western Star Financial and Prominence Capital Partners
6 deeds of trust that have caused the Debtor and his family a financial hardship. The timeliness of
7 the filing of the SDPHD is not indicative of any failure on the part of the Debtor and it is not in
8 any way an indication that this Plan is not viable. Although Debtor intends to have the liens
9 voided in a separate adversary proceeding, his ultimate goal is to save his home and intends to
10 complete his Plan regardless of the outcome of that proceeding.

11 On May 12, 2023, Debtor tendered a payment through the Trustee's TFS system in the
12 amount of \$3,150.

13 On May 15, 2023, Ms. Kelly sent Debtor's Counsel an email indicating that the Chapter
14 Trustee would be recommending confirmation of the plan. Ms. Kelly indicated that the terms
15 of the plan would be payment of \$3,000 for month 1, and \$3,858 for months 2 through 60.

16 On May 15, 2023, after Debtor's Counsel informed the Debtor of the Trustee's
17 recommendation, he tendered another payment in the amount of \$3,858 through MoneyGram.
18 Currently, Debtor is ahead of his payment obligations and only has \$708 remaining on his June
19 Plan payment.

20 The Debtor's Motion to Avoid Lien that was originally filed on April 13, 2023 requires
21 an amendment in order for the attached exhibits to be properly authenticated. This Motion will
22 be promptly filed.

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1 **CONCLUSION**

2 For the reasons stated above, it is respectfully requested that the Court overrule the
3 trustee's Objection to Confirmation and deny their Motion to Dismiss. In the alternative, it is
4 respectfully requested that the Court continue this hearing which will cure the deficiencies
5 outlined by the Chapter 13 Trustee.

6
7 Date: May 24, 2023


8 BENJAMIN HESTON,
9 Attorney for Debtor

1 **DECLARATION OF BENJAMIN HESTON**

2 I, Benjamin Heston, declare as follows:

3 1. I am the attorney for the Debtor in this bankruptcy case. I have personal knowledge of all
4 matters stated herein. On all matters stated on information and belief, I believe those allegations
5 to be true. I could competently testify to the allegations contained herein.

6 2. For the past several weeks, I have been dealing with an ongoing series of family
7 emergencies which put me out of work during the time that the Secured Debt Payment History
8 Declaration (“SDPHD”) was due on May 10, 2023.

9 3. On May 15, 2023, I reached out to Bridget Kelly to inform her that the Debtor was
10 current on his mortgage payments and that I was in the process of preparing the SDPHD. Ms.
11 Kelly indicated that once the SDPHD was filed and the Motion to Avoid Lien was granted, the
12 Chapter 13 Trustee would be recommending that the Plan be confirmed. Attached hereto as
13 Exhibit A is a true and correct printout of the email containing the Plan terms.

14 4. After receiving the Trustee’s email, I reached out to my client and informed him of the
15 Trustee’s recommendation. He indicated that he had already made a payment of \$3,150, but that
16 he would also make a payment of \$3,858 through MoneyGram so that the payment would post to
17 the Trustee’s accounting within a few days as opposed to the typical 7 to 10 days that it takes
18 through the TFS system. Attached hereto as Exhibit B is a true and correct printout from
19 TFSBillPay.com which shows the two payments made by the Debtor.

20 5. I declare under penalty of perjury under the laws of the United States that the foregoing is
21 true and correct.

22 Date: May 24, 2023

23 
24 BENJAMIN HESTON

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EXHIBIT A





Ben Heston <ben@nexusbk.com>

Re: Scarth #23-10960-WJ

1 message

Bridget Kelly <bridget@rodan13.com>
To: Ben Heston <ben@nexusbk.com>

Mon, May 15, 2023 at 12:39 PM

Plan payment:
\$2500 atty fee
\$2361 RS County 2022 tax yr
\$3037 RS County 2017 tax yr (\$1993.53 + 18%)
\$28,556.40 Dept of Tax & Fee (\$26,516 + 3%)
\$95,749 Prominence (\$77,326.93 + 8.75%)
\$74,294 Western (\$60,000 + 8.75%)
\$660 Wells Fargo
\$417 unsecured
SUBTOTAL: \$207,574
Tr fee: \$23,063.78
TOTAL: \$230,637.78
Less \$3,000 April plan payment
Equals: \$227,637.78, divided over remaining 59 months = \$3858, 2-60

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EXHIBIT B



The Online & Automated Solution to Chapter 13 Bankruptcy Payments

 tfsbillpay.com/paralegal/debtors/747057

Debtor – Jared Scarth

Bank Info

[Edit](#)

Bank name

Bank of America

Account Type

Checking

Account Number

*****8427

Routing Number

063100277

Payments

[Edit](#)

Schedule

Always Manual Payments

Authorization

No authorization. You cannot manage this account without an authorization.

[Add Authorization](#)

Case Info

[Edit](#)

Case Number

23-10960

Trustee

Rod Danielson (TR)

Upcoming Transactions

Processing Transactions

Recent Transactions

[View All Transactions](#)

| Date | Payee | Type | Status | Amount | TFS Fee | Total |
|--------------|--------------------|-----------------------|----------|------------|---------|------------|
| May 15, 2023 | Rod Danielson (TR) | Trustee Payment | Complete | \$3,858.00 | \$0.00 | \$3,858.00 |
| May 12, 2023 | Rod Danielson (TR) | Manual Debtor Payment | Complete | \$3,150.00 | \$7.99 | \$3,157.99 |

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

**100 Bayview Circle, Suite 100
Newport Beach, CA 92660**

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR'S OPPOSITION TO THE CHAPTER 13 TRUSTEE'S MOTION TO DISMISS AND REPLY TO OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 5/24/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Rod Danielson (TR) notice-efile@rodan13.com
Robert P Goe kmurphy@goeforlaw.com,
rgoe@goeforlaw.com;goeforecf@gmail.com
Brandon J Iskander biskander@goeforlaw.com,
kmurphy@goeforlaw.com
Ali Matin ali.matin@usdoj.gov,
carolyn.k.howland@usdoj.gov

Bradley A Patterson bapatterson@lgilaw.com
Valerie Smith claims@recoverycorp.com
Todd L Turoci mail@theturocifirm.com
United States Trustee (RS)
ustpregion16.rs.ecf@usdoj.gov
Jennifer C Wong bknotice@mccarthyholthus.com,
jwong@ecf.courtdrive.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 5/24/2023 I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Judge Wayne E. Johnson
3420 Twelfth Street
Suite 384 / Courtroom 304
Riverside, CA 92501-3819

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed (state method for each person or entity served):

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

5/24/2023

Date

Benjamin Heston

Printed Name

/s/Benjamin Heston

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.